

The 17th November, 1994.

No. 14/13/87-6Lab./825.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad, respect of the dispute between the workman and the management of M/s Advance Forging Pvt. Ltd., 31-A, DLF, Faridabad *versus* Virender Singh.

IN THE COURT OF SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, FARIDABAD.

Reference No. 371 of 88

IN THE MATTER OF INDUSTRIAL DISPUTE

Between

SHRI VIRENDER SINGH, BHIKHAN COLONY, OPPOSITE K. K. SPUN PIPE FACTORY, TIGAON ROAD, FARIDABAD. *.. Claimant.*

and

M/S ADVANCE FORGING PVT. LTD., 31-A, D. L. F. INDUSTRIAL ESTATE-I, FARIDABAD. *.. Management.*

Present :

Shri Ashok Sharma, Authorised representative, for the workman.

Sari Jagbir Baidani, Authorised representative for the Management.

AWARD

Under the provisions of section 10(1)(d) of Industrial Disputes Act, 1947, the Government of Haryana have, *vide* Endorsement No. OV/FD/104-88/31794-99, dated the 6th July, 1988 referred the following dispute between the parties above mentioned for adjudication :-

Whether the termination of services of Shri Virender Singh, is legal and justified. If not, to what relief, he is entitled ?

2. The case of the workman is that he was appointed as Electrical Supervisor on 4th September, 1984 but despite his designation, he used to work manually as Electrician with the assistance of one Helper. He has also alleged that the wages of Rs. 1775 which he was getting were fixed for working 12 hours a day. As 14th August, was his weekly rest and 15th August was a paid holiday, he had gone to his native village in district Bulandshar but could not come back on 17th August because of Festival and other necessary works. That when he had come to the factory on 18th August, he was stopped at the factory gate and told that his services had been terminated. The workman is alleged to have served a demand notice against his illegal termination on 22nd August, 1987. It has also been contended by the workman that during the conciliation proceedings before the conciliation officer, the management took a stand that the demand notice was premature because he had not been issued any charge sheet. Thereafter, an advocate was appointed as Enquiry Officer and the enquiry proceedings were conducted on a partisan manner. The Enquiry Officer had neither provided him necessary facilities, nor had allowed him to bring his representative from outside. The workman is also alleged to have made complaints repeatedly but the Enquiry Officer continued conducting the enquiry in utter violation of principles of natural justice. Further contention of the workman is that on the basis of a false enquiry report, the Management had inflicted upon him punishment too harsh and disproportionate to the alleged misconduct. It is on these facts that the workman had claimed his reinstatement with continuity of service and full back wages.

3. The case of the Management is that the claimant is not covered under the definition of workman. He was supervisor Incharge of Electrical/Mechanical department and his last drawn pay was Rs. 1800 p.m. There were many junior persons working under him and he used to avail of all the powers of recommendations/suggestions for his juniors to the Management. Further stand of the Management is that the claimant had committed acts of gross misconduct i.e. sabotaging, mis-behaviour with the seniors, instigation, threats and man-handling. It has further been alleged that as the claimant was convergent

with the electrical matters, he had intentionally damaged the main H.T. Cable with a sharp tool on 13th August, 1987 in the afternoon when the power was off. Since the power had to be released on the next day at 7 A.M., the claimant with an ulterior motive intentionally damaged the same. As 14th, 15th August were holidays so that the Management might get confused and could not get at the real culprit. He had been seen by the employees to damage the company's property on some occasions. He had also been instigating the workers to damage the Generator. A report was also lodged with the Police and for damaging the main H.T. Cable. It has been denied that the claimant was performing the functions of a workman or used to work for 12 hours a day. An objection has also been taken that the reference is bad in law. It has also been denied that the enquiry officer had conducted the enquiry in violation of the principles of natural justice or had refused to provide facilities to the workman. So, according to the Management the enquiry held was fair and proper and the same was conducted *ex-parte* when the claimant did not participate in the same. It has also been denied that the punishment of dismissal dated the 8th December, 1987 was not commensurate with the misconduct of the claimant.

4. In the rejoinder, pleas taken in the claim statement have been reiterated while these in the written statement controverted.

5. On the pleadings of the parties, the following issues were framed on 28th November, 1988:—

- (1) Whether Shri Virender Singh is not a workman as defined under the Industrial Disputes Act, 1947 ? OPM
- (2) Whether the reference is bad in law ? OPM
- (3) Whether the enquiry was fair and proper ? OPM
- (4) As per reference ?

6. *Vide* orders dated the 28th April, 1989 Issue No. 1 was treated as preliminary and the arguments addressed by the Authorised Representative for the parties have also been with regards to this issue.

7. My findings on Issue No. 1 with reasons therefor are as under :—

Issue No. 1 :

8. V. K. Malhotra, Works Manager examined as MW-1 stated that the claimant had given application Ex. M-1 for the post of Electrical Supervisor/Foreman and had also filled in prescribed proforma Ex. M-2 for the purpose. He was given appointment as Electrical Supervisor and the order of appointment Ex. M-2 issued in that behalf bears his signatures as also the signatures of the claimant. Apart from the claimant, who was electrical supervisor/Foreman there were three more supervisors, namely Ramesh Chand supervisor/Foreman maintenance, Gian Chander of Tool Room and Namraj of inspection. The witness also gave names of Phool Singh and Narain Singh who were working directly under him as Electrician and Generator respectively. According to this witness the claimant did not work with his own hands but used to get work from 4-5 persons working under his direct supervision and that the claimant used to recommend leave applications of the persons working under him. Four such applications of Idris and Daya Chand are Ex. M-7 to Ex. M-10. The applications of the claimant which he used to submit direct to this witness are Ex. M-4 to Ex. M-6. The witness also stated that the staff members including the claimant used to mark their attendance in a Register while the workers used to get their attendance marked in time office. The witness stated further that the claimant who was member of staff got his pay by means of a cheque whereas the workers were paid their wages in cash. According to this witness, the supervisors had to take part in the secret meetings of the company and for that purpose had to sit late also.

8. Phool Singh examined as MW-2 stated that he had worked for 1½ years under the claimant who was his supervisor. He had denied the suggestion put to him that he used to get only training from the claimant. The stand of the workman that Phool Singh was the real brother of the Time-Keeper living in neighbour-hood and that he would come to the factory to get training from him stands believed from this that Phool Singh had been issued ESI number viz. 5851561 which stands proved from the testimony of V. K. Malhotra examined as WW-5, Raghubir Singh as WW-4 and Kansli Ram examined as WW-5.

9. In his examination as WW-1, the workman stated that he used to work with his own hands, repair the machinery and apply grease and that Phool Singh brother of time-keeper who was living in his

neighbourhood used to get only training from him. The workman admitted that he had recommended leave application Ex. M-7 of Indrish because his Foreman Ramesh was not available. The workman did not adduce proof of the fact that Ramesh was not available or was on leave. He also admitted having recommended leave applications Ex. M-8 to Ex. M-10 of Daya Chand and Narain Singh but stated that they were not working under him. No explanation has been furnished by him as to why he had recommended the leave applications of the above said two workers when they were not working under him. The workman also admitted having given applications Ex. M-1 seeking employment as Electrical Supervisor/Foreman. In his application from Ex. M-2 he had given details of his 13 years experience as Electrical Supervisor in various concerns. He also admitted that 2-3 supervisors were working with him and that he used to get pay by cheque excepting few days when he was paid wages on Register. No proof of the same was given by him. He also admitted of marking his attendance in the Register. The workman also stated that he was not subordinate to anyone nor anyone was subordinate to him.

10. The discussion on the evidence led in the case coupled with an assertion made in demand notice that he was appointed as Electrical Supervisor shows it that the claimant was admittedly a supervisor and was in receipt of pay of Rs. 1775 p. m. The facts that he was paid his wages in variably by cheque and had been marking his attendance in the Register show it that he was holding supervisory post. It is also an un rebutted fact that the claimant had been recommending the leave applications of workers Idrish and Daya Chand and that the testimony of Phool Singh examined as MW-2 also proves it that the claimant used to supervise the work of this worker and also of one Narain Singh as stated by V. K. Malhotra examined as MW-1. From this all, an irresistible conclusion that can be drawn is that the claimant was not only holding the designation of supervisor only but his duties were also supervisory in nature. Therefore, when the workman was holding supervisory job and his pay also exceeded Rs. 1600 p. m., he is not a workman as defined in Section 2 (s) of I. D. Act. This issue is thus, decided in favour of the Management and against the workman.

11. In view of my findings on preliminary Issue No. 1 that the claimant is not a workman as defined in Section 2 (s) of I. D. Act, 1947, he is not entitled to raise an Industrial Dispute and for that matter "No Claim Award" is passed.

N. L. PRUTHI,

The 11th October, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.

Endorsement No. 3697, dated the 18th October, 1994.

A copy, with three spare copies, is forwarded to the Commissioner, and Secretary to Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.